

Minutes of the May 21, 2010 Regular Council Meeting

Call to Order and Flag Salute at 3:30 pm by Mayor Serio.

Council in Attendance: Weistling, Serio, Carmean, Bunting, Smallwood, Tingle and Langan

Topics for Discussion and Possible Action

a. AARP Chapter #5226 Request to Hold Used Book Sale (9/25/2010) on Nichols' Lot – Pat Schuchman

Building Official Schuchman advised Council that Mrs. Maureen Eisenhart, AARP Chairperson of Community Service for Chapter #5226 has permission from Nichols Management and Johnson Country Markets to use the lot to hold a Used Book sale on September 25, 2010 from 9AM – 3PM. Proceeds from the sale will be given to the Selbyville and Frankford Libraries. She requested Council's permission to hold the event.

Motion to approve – Council Member Carmean

Second – Council Member Langan

Discussion: None.

Vote: All in favor (7-0)

b. Resolution #44-2010 Rename W West Virginia Avenue – Town Manager Abbott

Town Manager Abbott introduced Resolution #44-2010 to rename W West Virginia Avenue to Oyster Bay Drive as part of the Sussex County 9-1-1 Street Re-naming Project.

Motion to accept Resolution #44-2010 – Council Member Tingle

Second: Council Member Bunting

Discussion – Council Member Weistling requested that the full text of the resolution be added to these minutes. (Resolution #44-2010 is attached to the end of this document).

Vote: All in favor (7-0)

Resolution #44-210 passed.

Approval of Minutes:

Motion to Approve the Minutes of April 23, 2010 Meeting - Council Member Carmean

Second: Council Member Smallwood

Discussion: Mayor Serio noted a minor error within the body of the document that did not require change ("an" should be "as").

Vote: All in favor (7-0)

Minutes Approved

Treasurer's Report:

Council Member Bunting noted that the financial report is included in the council meeting packet. The recent reallocation of funds is now showing positive results.

Discussion: Council Member Carmean expressed concern that not all property taxes are paid. Mayor Serio advised that the Town has sought direction from Town Solicitor Steen as to what action should be taken. Town Clerk DiPietrantonio reported that one of the two outstanding taxes due will be paid the beginning of next week. Council Member Carmean questioned the Comcast Cable fees. Mayor Serio advised that she has sought information on the matter and expects it to be resolved shortly. Mayor Serio noted that Fenwick Island Police Department has been aggressive in seeking grant funding and is showing good results.

Motion to Accept the Treasurer's Report - Council Member Tingle

Second - Council Member Langan

Vote: All in favor (7-0)

Treasurer's Report Approved

Town Manager Report:

- Town Manager Abbott reported that the re-allocation of funds has been resolved but that the results are not reflected in this month's financial statement.
- The Public Safety Building project is moving forward.
- The new Personnel Policy regarding Employee Benefits has been implemented.

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- Street renaming – Bay Street will be renamed and Mr. Abbott is seeking a consensus among property owners on the affected street as to a new name.
- The Town will receive a reimbursement of \$2607 from FEMA for expenses related to a recent 48-hour snow event.
- Town Hall and the Public Works Building underwent an energy audit funded by the DE Energy Office. A vendor will provide results and assist with writing a grant to pay for upgrades.

DISCUSSION

- Council Member Weistling asked the status of the weekend parking sales staff; Mr. Abbott advised that the office is staffed on weekends and holidays for the sale of parking permits.
- Council Member Weistling asked the status of the replacement “Welcome” sign; Mr. Abbott reported that the sign has been ordered but, because it requires detailed work, it will not arrive for approximately another four weeks.
- Council Member Smallwood asked the status of the “Wedding House” on Atlantic Street. Mr. Abbott reported that the owner of the property recently met with him, Building Official Schuchman and FIPD Chief Boyden. Owner was advised that advertizing for this purpose is inconsistent with that particular zoning classification. The Town agreed to allow for the existing booked events by the owner and that the owner is responsible for providing additional police presence. FIPD provided two officers recently at time/half being paid by the owner. The Town has taken action to place the burden on the owner of the property. Mr. Smallwood expressed concern that the FIPD is being paid by the owner while wearing FIPD uniforms and that the FIPD is not a private security firm. He questioned the Town’s insurance coverage for this type of occurrence. Chief Boyden noted that the town allows its officers to direct traffic for events, most notably construction companies (paid for by them), and this has never been a concern. Council Member Smallwood advised that he is concerned that the FIPD presence exposes the Town to liability should personal injury occur. Mayor Serio requested Town Manager Abbott contact the Town’s insurance carrier for clarification. Continuing, Council Member Smallwood noted a recent noise violation, asking if this was the same house being discussed, and cited Town Ordinance regarding noise violations (three violations = revocation of rental license). A broad discussion of Town Code regarding rental licenses and noise ordinance violations followed. Council Member Carmean seconded Mayor Serio’s suggestion that Town Manager Abbott contact the Town’s insurance carrier **and the Town’s legal advisor** for clarification.
- Council Member Weistling asked if the Town is allowing more wedding events in the fall; Mr. Abbott responded that the Town will honor the current contracts and that the owner must provide police services. Council Member Weistling suggested that the fall wedding might be changed since there is ample time to make alternate arrangements and, thus, not violate Town Ordinance. Mr. Abbott noted that Town Zoning Ordinance does not allow for “reception” facilities. The fact that the property owner chose to advertize his property(ies) as such are against zoning code; however, the Town was able to negotiate a compromise agreement that will allow him to honor current contracts that seems to be in the best interest of the Town and the property owner. Mayor Serio noted that the key here is that this was being advertized as a commercial venture. So long as a property owner does not advertize as a “reception” facility, the Town cannot stop his renting his properties (provided he has paid for his rental license and pays appropriate taxes). It is difficult to regulate the number of people in a home because you don’t know how many are staying overnight. The only way to stop problem rentals is by citing the disorderly conduct and/or noise ordinance violations. The Town has the mechanism to exert control over rentals. Council Member Bunting asked the length of rental license revocations; Mayor Serio advised that the Town cannot permanently revoke a property owner’s right to have a rental license. Council Member Bunting suggested that the Town might consider a way to permanently revoke a license. Mayor Serio tasked Council Member Weistling and the Charter and Ordinance Committee to research the topic.
- Council Member Weistling noted that the Town had a similar experience several years ago with the same individual but he is unsure of how it was resolved. Building Official, Pat Schuchman, advised that, because of a typographical error in the Town’s document, the individual’s attorney was able to successfully challenge the ordinance. The Town Ordinance has since been updated and, so far as she knows, the individual has been in compliance until now. Regarding the “three violations” rule, any property owner with three violations in a given year will receive written and oral notice of the violations. Revocation may be immediate or deferred. Council Member Weistling added that the recently revised Noise Ordinance should be helpful in curbing abuse.

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Department Reports:

- Beach Patrol –No report
 - Lifeguard Schedule is Sat/Sun this weekend and Sat/Sun/Mon during Memorial Day weekend. Lifeguards begin full time the following Saturday after Memorial Day.
- Building Official – Report is included in the council packet.
 - Mrs. Schuchman recently attended a meeting regarding changes to the national energy code to be effective July 1, 2010. IECC 2009 (International Energy Conservation Code) is the national model standard under the American Recovery and Reinvestment Act (ARRA) of 2009 and is available on the Town web site <http://fenwickisland.delaware.gov/index.aspx?NID=911>. Essentially, all construction changes must be “energy star” rated with a few exceptions.

DISCUSSION

Council Member Weistling asked if this new information is being given to contractors when they visit her office. Mrs. Schuchman advised that she is giving the information out to contractors. Council Member Weistling suggested a hand-out be made a permanent part of the permitting process.

- Public Works: Report is included in the council packet.
 - Town Manager Abbott added that trash cans, lifeguard stands and the shuffleboard court are ready for the summer.

DISCUSSION

Council Member Weistling asked the status of the Public Works staff. Mr. Abbott advised that two members are currently on “light” duty but this does not represent a hardship for the department.

- Fenwick Island Police Department: Report included in the council packet.
 - Chief Boyden also reported that his department will host a Pedestrian and Bicycle Safety Checkpoint June 11, 2010 in cooperation with the University of Delaware and the Delaware Department of Highway Safety. It will be on Bunting Avenue. He also noted that the flexible cones in the bike path on Route 1, removed during the winter to facilitate snow removal, will be back in place shortly.

Committee Reports:

- Beach Committee –No report

DISCUSSION

Council Member Bunting asked about the status of the dune fencing. Council Member Langan advised that it is progressing; materials are in place and the Town is waiting for DNREC to complete installation. Council Member Smallwood noted that the Beach Cleanup is on Saturday, May 22, at 9:00 AM on Dagsboro Street beach.

- Environmental Committee –Council Member Carmean reported that the Town has been recognized for the 5th year as a Tree City USA. The Town expects to receive signs to that effect. The Tree Triage Program is complete. The Environmental Committee is now looking at another grant and is gathering information. It will present to Council at the June meeting. June 8 is the next committee meeting; rain barrels are still available for pickup. The Center for the Inland Bays (CIB) is hosting a meeting on June 10, 2010 for those interested in oyster farming.

Planning Commission: Report included in Council book.

Charter & Ordinance:

- Proposed First Reading of Chapter 127 Sanitation was withdrawn by Council Member Weistling.
- Council Member Weistling introduced a First Reading of Chapter 131 - Sewers (included at the end of these minutes).

Motion to accept – Council Member Weistling
Council Member Langan seconded.

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DISCUSSION: Council Member Weistling advised that the proposed changes involve minor changes in wording and a change in fines.

DISCUSSION: None

Vote to accept the Proposed First Reading of Chapter 131 - Sewers: All in Favor.

Old Business:

- None

New Business – No Action to be Taken:

- None

Public Participation:

- Lynn Andrews (1205 N Schulz Rd) – Mrs. Andrews asked Council Member Bunting about the Town’s policy for smoke alarms in rental properties and if the Town is liable for damages if it issues a rental license to a facility that does not have one.
 - Council Member Bunting advised that the State of Delaware requires a smoke detector in all dwellings but he asked that Charter and Ordinance research a requirement to include carbon monoxide monitors in all dwellings. Placement is key to effective monitoring and ability to save lives. There is a 5–year life now for monitors and the monitor will emit an alarm when it needs replacing.
 - Mayor Serio advised that a home for sale will not transfer until/unless a smoke alarm is installed and that many rental companies require smoke detectors before they list the property. Council Member Bunting added that it is difficult to verify the existence of a working smoke alarm without conducting a physical inspection each year. He noted that the Ocean City (MD) police and fire are required to note the existence of smoke alarms each time they enter a building for any unusual occurrence. Council Member Weistling asked if the Town would not be more liable if an ordinance is in place and the alarm doesn’t function.
- Lynn Andrews – questioned the mandatory bulk heading law and its enforcement by DNREC. Mrs. Andrews asked who is liable for damages in a failure to maintain. Building Official Schuchman advised that the Town recently compelled a property owner to make repairs.
- Mary Pat Kyle (1205 Bunting Ave) – thanked Council for its intervention regarding trash pickup. Mrs. Kyle asked who is responsible to check swimming pools at rental properties and, when the Town issues a rental license, does it make the Town liable for injury. Mayor Serio advised that tenants will complain to the property owner if a swimming pool is not maintained. The rental license is a “business” license and as such does not make the town liable for damages.
- Martha Keller (1312 Bora Bora St) – suggested that those seeking a rental license sign a paper indicating that smoke detectors, pools, etc are in working order. Mayor Serio suggested that the Town explore this with its attorney.
- Martha Keller – suggested that the Town charge an extra fee for Police and Trash service to those seeking a rental license. She also suggested an additional fee for greater than twelve day guests. Mayor Serio advised that this may be discriminatory.
- Dick Bowman (7 W Dagsboro St) – thanked Council for its expression of sympathy. Mr. Bowman noted that the Fenwick Island Lions Club will have a pancake buffet on June 5, 2010 at Harpoon Hannah’s. Cost is \$8.
- Mike Quinn (5 W Houston St) – asked if there are any restrictions on the bulk trash pick up and if the Town received any calls about the missed curbside recycling pickup. Mayor Serio advised there are no restrictions that she is aware of. Mr. Abbott advised that the recycling company is now on proper summer schedule. Mayor Serio noted that you may leave the recycle bin out if the company misses a Friday pickup; it must be put away once its been emptied.
- Council Member Carmean advised that the Barefoot Gardeners will host a plant sale on May 29. Proceeds from the sale benefit community oriented projects. This year’s special project is Justin’s House in Bethany Beach.

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President's Report:

- Mayor Serio requested that Town Hall make available to rental agents a booklet with rules and regulations for summer visitors
- SCAT (Sussex County Association of Towns) meeting was in Bridgeville. Next meeting is hosted by Slaughter Beach. Next Ambulance meeting will be the first week in June.
- Council Member Tingle added that the recent Coffee with Rep Hocker was well attended. In response to a question from Lynn Andrews, Mrs. Tingle advised that the proposed casino for Indian River Inlet was discussed. Council Member Bunting advised that he understands the proposal is being withdrawn; Mayor Serio advised that Sussex County Council has issued a moratorium on all casino activity pending further study.
- Mayor Serio made note of upcoming meetings.
- Mayor Serio thanked the Fenwick Island Society of Homeowners (FISH) for including a voter registration form in their recent flyer.
- Mayor Serio asked the status of the Memorial Day Service. That will be on Saturday, May 29, 2010 at 10:00 am.
- Council Member Carmean asked if residents who recently underwent a street name change should re-register to vote. Town Clerk DiPietrantonio advised that those who have had an "involuntary" address change do not need to re-register; the changes have been handled internally.
- Dick Bowman asked if Board of Election meetings might be held on June 25. Mayor Serio advised that there are strict time restraints regarding elections and that June 23 is the within the required time frame.

Motion to Adjourn: Council Member Tingle

Second: Council Member Langan

All in favor Motion passed (7-0)

Mayor Serio adjourned the meeting at 4:32 PM.

Respectfully submitted,

Agnes DiPietrantonio, Town Clerk

For Diane Tingle, Secretary

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NOTICE

On May 21, 2010 The Fenwick Island Town Council
Passed the Following Resolution #44-2010
Renaming of West West Virginia Avenue

Whereas, it has been determined that in order to better serve the health, safety and welfare of the citizens of Sussex County that it be necessary to adopt an ordinance establishing standards for naming roadways, posting street signs and assigning numbers to all dwellings and businesses that will assist emergency services, the United States Postal Service the public in the timely and efficient provision of services to these residents and business; and

Whereas, the Town of Fenwick Island did, on October 24, 2008, resolve to enlist the services of the Sussex County Mapping and Addressing Departments to assist in re-addressing and re-naming streets within the Town limits that have been identified as areas of concern for Public Safety; and

Whereas, the street currently named West West Virginia Avenue, has been found to be an area of concern; and, through outreach to its citizens, have found names that meet County standards and that are acceptable to residents.

Therefore, the Town Council, of the Town of Fenwick Island, on behalf of the citizens and property owners of The Town of Fenwick Island, in order to accomplish this goal, do hereby establish the following name for this street : West West Virginia Avenue to be renamed "Oyster Bay Drive."

Attest:

Agnes D. DiPietrantonio, Town Clerk

Audrey Serio, President of Council

Diane B. Tingle, Council Secretary

I, Diane B. Tingle, Secretary of the Town Council, of the Town of Fenwick Island, Delaware, do hereby certify that the foregoing is a true and correct copy of the Resolution passed by the President and Council at a meeting on May 21, 2010, at which a quorum was present and voting throughout and the same is still in force and effect.

Date

Diane B. Tingle, Council Secretary

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PROPOSED FIRST READING – MAY 21, 2010

Chapter 131, SEWERS

EXISTING:

§ 131-1. Permission to construct and maintain sewage system.

Sussex County is hereby granted permission to construct, maintain, operate, repair and replace water distribution and sanitary sewage collection lines, force mains, lift station, pump stations, manholes and other appurtenances within the rights-of-way of all roads within the town limits which are dedicated to public use in accordance with the requirements of Title 9, Chapter 67, Paragraph 6703 of the Delaware Code, provided that all roads of Fenwick Island that are damaged or removed in the course of water and sewer facility installation and repair shall be replaced in accordance with the Delaware Division of Highways standards for secondary roads and paving damaged or removed from roads maintained by the Delaware Division of Highways shall be replaced in accordance with the Delaware Division of Highways' requirements. The cost thereof shall be made by and at the sole expense of Sussex County.

§ 131-3. Determination and notice of violation.

A. The Town Commissioner of Health and Sanitation, a designee he appoints or a designee of the Town Council shall have discretion in determining when there exists a condition such as set forth in § 131-2 above which is or threatens in any way to be dangerous to the safety or health of the people of Fenwick Island.

B. After making such a determination the Town Commissioner of Health and Sanitation, a designee he appoints or designee of the Town Council shall give written notice of the violation to the owner and/or occupant of the property on which the condition exists. The notice shall set a time limit for correction, removal or abatement of the condition, which period shall not exceed fifteen (15) days. Said notice may be served by the Commissioner of Health and Sanitation, any member of the Town Council, Police Department or town employee, or it may be served by mailing by registered or certified mail with return receipt.

§ 131-4. Violations and penalties.

B. Any person found guilty of failing to correct, remove or abate a dangerous to safety or health condition shall be fined not less than twenty-five dollars (\$25.) nor more than fifty dollars (\$50.) for each offense; and it shall be determined that each day that the condition exists after the date set for correction, removal or abatement shall constitute a separate offense, thereby permitting the imposition of a fine for each day of a continuing offense.

C. If a condition such as set forth in § 131-2 is determined by the Town Commissioner of Health and Sanitation, a designee he appoints or a designee of the Town Council to be an emergency and the owner and or occupant is not available for receipt of notification such as set forth in § 131-3 or if the owner fails to comply with the notification as set forth in § 131-3 within the prescribed time, the town shall have full power and authority to enter into or upon the property in question with such personnel, implements, equipment and vehicles as may be necessary and proper to correct, remove or abate such a condition dangerous to safety or health. Any expense incurred by the town in performing such work, labor and proceedings shall constitute a lien on the property with interest at the lawful rate and shall be collected in the same manner as provided for the collection of delinquent taxes. The payment for such expense shall be in addition to any penalties that may be imposed by Subsection B of this section.

PROPOSED:

§ 131-1. Permission to construct and maintain sewage system.

Remove "water distribution and".

§ 131-3. Determination and notice of violation.

(Replace subsections "A" and "B" as follows:)

A. *The Town Council shall appoint a designee who shall have discretion in determining when there exists a condition such as set forth in § 131-2.*

B. *After such determination has been given, the Town Manager shall give written notice of the violation to the owner and/or occupant of the property on which the condition exists. The notice shall set a time for correction, removal or abatement of the condition, which period shall not exceed fifteen (15) days.*

§ 131-4. Violations and penalties.

B. Upon conviction, such person found guilty of failing to correct, remove or abate a dangerous to safety or health condition shall be fined \$200 for each offense. It shall be determined that each day that the condition exists after the date set for correction, removal or abatement shall constitute a separate offense, thereby permitting the imposition of a fine for each day of a continuing offense.

(Replace subsection "C" as follows:)

C. If such condition as set forth in § 131-2 is determined by the Town of Fenwick Island to be an emergency and the owner and/or occupant is not available for receipt of notification such as set forth in § 131-3 or if the owner fails to comply with the notification as set forth in § 131-3 within the prescribed time, the Town of Fenwick Island shall have the power to enter the property and correct the problem. The payment for such expense shall be in addition to any penalties that may be imposed by Subsection B of this section.